

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SUPERIOR COURT
C.A. NO.

CITY OF NORTH ADAMS and the CITY
OF NORTH ADAMS REDEVELOPMENT
AUTHORITY,

Plaintiff,

v.

PWJ CORPORATION, GEORGE APKIN &
SONS, INC., and 17 DEPOT STREET
REALTY, LLC,

Defendants

VERIFIED COMPLAINT

INTRODUCTION

This is an action brought by the City of North Adams (the “City”) and the North Adams Redevelopment Authority (the “Authority”) (collectively, the “Plaintiffs”) against Defendants PWJ Corp. (“PWJ”), George Apkin & Sons, Inc. (“GAS”), and 17 Depot Street Realty, LLC (collectively, the “Defendants” or “Apkin”), who are operating a common enterprise for the purpose of trespassing and maintaining a nuisance upon publicly-owned property without right and without payment of compensation therefor. As a result of their unlawful acts, the Plaintiffs seek injunctive relief to compel the Defendants to remove their vehicles, shipping containers, junk, refuse and debris from the Authority’s property, to test for and remediate any environmental contamination that they have caused, and to restore the Authority’s property to its original condition. The Plaintiffs are also seeking monetary damages based on the Defendants’ unlawful use and occupancy of the Authority’s land, for unjust enrichment and as reimbursement for unpaid fire protection charges for services provided to the Defendants.

Filed contemporaneously herewith are motions for Preliminary Injunction and for *Ex Parte* Real Estate Attachment.

PARTIES

1. Plaintiff City of North Adams is a municipal corporation with a principal place of business at 10 Main St., North Adams, MA 01247.
2. Plaintiff City of North Adams Redevelopment Authority is a redevelopment authority established pursuant to Chapter 121B of the General Laws with a principal place of business at 10 Main St., North Adams, MA 01247.
3. Defendant PWJ Corporation is a Massachusetts corporation with a principal place of business at 135 Old Cheshire Rd., Lanesborough, MA 01237.
4. Defendant George Apkin & Sons, Inc. is a Massachusetts corporation with a principal place of business at 37 Pleasant Street, Adams, MA 01220.
5. Defendant 17 Depot Street Realty, LLC. is a Massachusetts corporation with a principal place of business at 17 Depot Street, Adams, MA 01220.
6. Upon information and belief, the Defendants named herein operate as a single entity with respect to the activities which are the subject of this Verified Complaint.
7. The defendants shall hereinafter collectively be referred to as “Apkin”.

JURISDICTION

8. The Superior Court has jurisdiction over this matter pursuant to G.L. c. 212, §4.

STATEMENT OF FACTS

THE LEASE

9. Defendant PWJ Corporation (“PWJ”) is the record owner of property located at or near 80 State Street in North Adams and shown on Assessor’s Map 198, Lots 47 and 48 (the “Apkin

Property”). A true and accurate copy of the Apkin Property card is attached hereto as Exhibit A.

10. By quitclaim deed, Philip Apkin conveyed the Apkin Property for no consideration to PWJ Corporation on October 30, 1990. A true and accurate copy of the Apkin Property deed is attached hereto as Exhibit B.

11. According to the records of the City’s Assessing Department, real property taxes for the Apkin Property are issued to PWJ Corporation, c/o George Apkin & Sons, Inc. (“GAS”) at 17 Depot Street, Adams, Massachusetts.

12. Apkin operates a scrapyard business on the Apkin Property, which includes but is not limited to the storage and stockpiling of various metals, inoperable vehicles, vehicle parts, contaminated liquid waste and other junk, refuse and debris.

13. The Authority owns property located at or near 80 State Street and shown on Assessor’s Map 151, Lot 59 that immediately abuts the Apkin Property (the “Authority Property”). A true and accurate copy of the Authority Property card is attached hereto as Exhibit C.

14. The Apkin Property is a narrow strip bounded to the northeast by a railway track and to the southwest by the Hoosic River. Immediately south of the Apkin Property is land owned by a rail company, Pan Am Southern, LLC, and the property to the north of the Apkin Property is the Authority Property. A true and accurate image of the Apkin and Authority properties taken from the City’s GIS system is attached hereto as Exhibit D.

15. On or about March 27, 2006, the Authority and GAS entered into a lease agreement (the “Lease”) pursuant to which GAS was permitted to use a portion of the Authority Property, identified as “Parcel A” on a Plan attached to the Lease, for the parking and storage of motor

vehicles for a term of five (5) years. A true and accurate copy of the Lease is attached hereto as Exhibit E.

16. Parcel A extended north from the Apkin Property into the Authority Property approximately 160 feet and was .855 acres. Exhibit E.
17. The Lease was signed by William Apkin. Id.
18. The original term of the Lease was January 1, 2005 to December 31, 2009. Id., Fourth Clause.
19. Under the Lease, Apkin was to pay the City \$5,000 annually, in two equal installments made payable to the City of North Adams and submitted to the Office of the City Treasurer, for the use of Parcel A. Id., Fifth Clause.
20. The Treasurer deposited Lease payments in a Redevelopment Authority account and used these payments to make repairs to the bridge by which the Authority and Apkin Properties are accessed.
21. The Lease also required Apkin to indemnify and hold harmless the City for all claims and liability arising from Apkin's use of Parcel A, and to keep Parcel A free from hazardous waste and contaminated products. Id., Third Clause.
22. The Lease did not address renewal or extension. Id.
23. Apkin has continually occupied and made use of Parcel A since the parties executed the Lease through the filing of this Verified Complaint.
24. Apkin made a single Lease payment of \$5,000 to the City for the period January 1 through December 31, 2010 on January 31, 2011. See George Apkin & Sons Rental Agreement Payment History Ledger, attached hereto as Exhibit F.
25. The City accepted the January 31, 2011 payment without reservation.

26. The parties' conduct in January 2011 created an actual or implied contract and tenancy at will relationship between Apkin and the Plaintiffs.

APKIN'S UNLAWFUL USE OF PARCEL A

27. The Plaintiffs intended and understood the Lease to have continued beyond its initial term and neither the City nor the Authority have taken any action to terminate Apkin's use of Parcel A.

28. The parties' conduct created an actual or implied contract whereby Apkin was obligated to pay for its use and occupancy of Parcel A.

29. Apkin has not made any payment for the use and occupancy of Parcel A since 2011 but has continued to use and occupy Parcel A for the purposes set forth in the Lease.

30. Apkin has been unjustly enriched by enjoying the benefits of the use and occupancy of Parcel A without paying any compensation therefor.

31. The Lease required Apkin to "keep [Parcel A] clean and free of unsightly debris or waste" and did not allow "hazardous waste or contaminated products to be stored on or come into contact with [Parcel A]." Exhibit E, Second Clause.

32. Apkin or its agents have made use of Parcel A for purposes not permitted under the Lease, including, but not limited to, permitting an accumulation of waste to occur, storing debris and hazardous waste, and creating a man-made pond on the Authority Property. See Exhibit D; Exhibit E; see also Google Map Image pulled December 27, 2022, attached hereto as Exhibit G.

33. Apkin's use of the Parcel A constitutes a nuisance, source of filth and potential cause of sickness on the Authority Property and in the City.

34. Apkin has significantly expanded its use of Parcel A, not paid for its use of Parcel A since 2010, and has caused environmental damage to the Authority Property.

35. Plaintiffs have been and continue to suffer damages as a result of Apkin's use and occupancy of Parcel A.

APKIN'S UNLAWFUL USE OF OTHER AUTHORITY PROPERTY

36. Apkin has expanded its use of the Authority Property beyond that permitted under the Lease both with respect to location, scope and type of use.

37. Apkin or its agents have placed vehicles, storage containers, shipping containers, and other refuse and debris on the Authority Property beyond the area contained within Parcel A. See Exhibit D; Exhibit G. This area shall hereinafter be referred to as "Parcel B".

38. Apkin or its agents began placing items and vehicles on Parcel B several years ago, and it continues to make use of Parcel B as of the date of the filing of this Verified Complaint.

39. Apkin has never been permitted to use or occupy Parcel B or any other portion of the Authority Property outside the boundaries of Parcel A.

40. As of the date of this Complaint, Apkin continues benefit from its use and occupancy of Parcel B without right and without payment of compensation therefor.

41. Apkin or its agents have permitted an accumulation debris and waste to occur on Parcel B and caused hazardous waste and contaminated products to come into contact with the Authority Property. Exhibits D & G.

42. Apkin and its agents have also created a man-made pond on the Authority Property in a location that appears to straddle both Parcel A and Parcel B. Exhibits D & G.

43. Upon information and belief, Apkin never received consent or authorization, or any of the necessary environmental permits and approvals from state and local boards or commissions, to establish a pond on the Authority Property.

44. Apkin's use of the Parcel B constitutes a nuisance, source of filth and potential cause of sickness on the Authority Property and in the City.

45. Apkin has never paid for its use and occupancy of Parcel B.

THE FIRE

46. On May 25, 2021 a fire erupted as a result of Apkin's activities on the Authority and Apkin Properties. See Fire Department Incident Report 21-421-IN, a true and accurate copy of which is attached hereto as Exhibit H.

47. The City's Fire Department responded to the Authority and Apkin Properties and upon arrival firefighters observed a pile of 4-6 crushed and stacked vehicles on fire and instituted fire suppression measures. Exhibit H, at 2.

48. Upon his arrival, the Fire Chief found an approximately 20 foot by 20 foot area of stacked vehicles entirely engulfed in flames. Exhibit H, at 3.

49. The scale of the fire caused the Fire Chief to call in neighboring Fire Departments that have mutual aid agreements with the City; the Fire Chief called Adams, Clarksburg, Florida, Williamstown, Orange, and Pittsfield Fire Departments, amongst others, to help respond to the fire and cover other areas of the City in the event another emergency arose, and state fire marshals to assist with the investigation of the cause of the fire. Exhibit H, at 3.

50. According to the Fire Chief's incident report, Defendant William Apkin told the Chief at the scene that he had been sorting the junked vehicles when he identified a gas tank remaining in one of the vehicles that was leaking, and when he attempted to remove the tank with the machine he was using the gasoline ignited and caused the surrounding vehicles to catch fire. Exhibit H, at 3.

51. The City invoiced Apkin for fire response services related to the fire caused by Apkin in the amount of \$83,791.76 on December 13, 2022. A true and accurate copy of the December 13, 2022 invoice is attached hereto as Exhibit I.
52. Payment of the invoice was due on January 12, 2023. Id.
53. Apkin has not paid the December 13, 2022, invoice for fire services provided in response to the May 25, 2021 incident.
54. The City is unaware of any liability insurance that may be available to pay for any damages awarded in this matter and, in fact, has been notified by Apkin's insurer that it does not insure the Apkin Property. A true and accurate copy of communications between the City and Apkin's insurance representative is attached hereto as Exhibit J.

COUNT I - BREACH OF CONTRACT (PARCEL A)

55. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 54 as if fully set forth herein.
56. The Authority and Apkin entered into a lease agreement allowing Apkin to use Parcel A of the Authority Property that automatically renewed upon expiration of the original term and remains in full force and effect as of the filing of this Verified Complaint.
57. Apkin has continued to occupy Parcel A following the expiration of the original term of the Lease and continues to occupy Parcel A as of the filing of this Verified Complaint.
58. Apkin has not provided payments for the use and occupancy of Parcel A since January 2011, which applied to calendar year 2010, despite its continued occupation of Parcel A.
59. The Lease requires Apkin to keep Parcel A free from hazardous waste and contaminated products.

60. Apkin has failed to prevent hazardous materials and contaminated products from coming into contact with Parcel A.
61. The Lease requires Apkin to keep Parcel A clean and free of unsightly debris or waste.
62. Apkin has failed to keep Parcel A clean and free of unsightly debris or waste.
63. The Authority has fulfilled all of its duties and obligations under the lease agreement by permitting Apkin to use and occupy Parcel A without interference.
64. Apkin's continued occupation of Parcel A without payment therefor and failure to comply with the Lease terms by preventing hazardous materials and contaminated products from coming into contact with Parcel A and by failing to keep Parcel A clean and free from unsightly debris and waste constitutes breaches of the contract between the Authority and Apkin for the use and occupation of Parcel A.
65. Apkin's breach of the Lease has caused damages in the amount of the fair market rental value of Parcel A, plus interest and reasonable rent increases based upon the rate of inflation, and the cost to remediate the effects of the hazardous materials that came into contact with Parcel A.

COUNT II - BREACH OF IMPLIED CONTRACT (PARCEL A)

66. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 65 as if fully set forth herein.
67. The Authority and Apkin entered into a lease agreement allowing Apkin to use Parcel A of the Authority Property.
68. Apkin has continued to occupy Parcel A following the expiration of the original term of the Lease and continues to occupy Parcel A as of the filing of this Verified Complaint.

69. Apkin made one payment for the continued occupation of Parcel A of the Authority Property following the expiration of the Lease, and that payment was accepted without reservation, converting Apkin to a tenant at will of Parcel A.
70. The parties' conduct and intentions following expiration of the initial Lease term gave rise to an implied contract permitting Apkin to continue to use and occupy Parcel A for \$5,000 per annum.
71. Apkin has not provided payment to the City for the use and occupancy of Parcel A since January 2011.
72. Apkin has failed to prevent hazardous materials and contaminated products from coming into contact with Parcel A.
73. Apkin has failed to keep Parcel A clean and free of unsightly debris or waste.
74. The Authority has fulfilled all of its duties and obligations under the implied contract permitting Apkin to use and occupy Parcel A without interference.
75. Apkin's continued occupation of Parcel A without payment therefor and failure to keep Parcel A free from unsightly debris and waste, and to prevent hazardous materials and contaminated products from coming into contact with Parcel A constitute breaches of the implied contract between the Authority and Apkin for the use and occupation of Parcel A.
76. Apkin's breach of its implied contract has caused damages in the amount of the fair market rental value of Parcel A, plus interest and reasonable rent increases based upon the rate of inflation, and the cost to remediate the effects of the hazardous materials that came into contact with Parcel A.

COUNT III – UNJUST ENRICHMENT (PARCEL A)

77. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

78. The Authority and Apkin entered into a lease agreement allowing Apkin to use Parcel A of the Authority Property.

79. Apkin continued to occupy Parcel A after the original term of the Lease, becoming a tenant at sufferance, and continues to occupy said Parcel A as of the filing of this Verified Complaint.

80. Apkin has not paid for the use and occupation of said Parcel A since calendar year 2010.

81. A tenant at sufferance must pay for the use and occupancy of real property it possesses.

82. Apkin received the substantial benefit of the use of Parcel A, the value of which Apkin was aware of based upon the terms of the Lease.

83. Apkin understood it was receiving a substantial benefit without paying therefor based upon the terms of, and its past payments under, the Lease.

84. Apkin's continued use and occupation of Parcel A without payment therefor has unjustly enriched Apkin, and caused damages, in the amount of the fair market rental value of Parcel A, plus interest and reasonable rent increases based upon the rate of inflation.

COUNT IV - TRESPASS (PARCEL B)

85. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 84 as if fully set forth herein.

86. The Authority is the record owner of the Authority Property and has actual and lawful possession of the portion of the Authority Property identified herein as Parcel B.

87. Apkin has intentionally and without authority placed vehicles, storage and shipping containers, refuse and debris and hazardous waste on Parcel B.

88. The Authority has not permitted or consented to Apkin's placement of vehicles, storage and shipping containers, refuse, debris or hazardous waste on Parcel B.

89. Apkin's unauthorized placement of vehicles, storage and shipping containers, refuse, debris and hazardous waste on Parcel B has caused damage by the loss of the beneficial use of such property and lost rents.
90. Upon information and belief, Apkin's placement and storage of hazardous materials and waste, and creation of an unlawful retention pond, has resulted in a release of hazardous materials on the Authority Property which requires remediation under the laws of the Commonwealth of Massachusetts and the United States Environmental Protection Agency.
91. Apkin's use of the portion of the Authority Property referred to herein as Parcel B constitutes an ongoing trespass.

COUNT V – UNJUST ENRICHMENT (PARCEL B)

92. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 91 as if fully set forth herein.
93. The Authority and Apkin did not enter into a lease agreement allowing Apkin to use Parcel B.
94. The Authority did not give Apkin permission to use and occupy Parcel B.
95. Notwithstanding the absence of permission or authority to do so, Apkin has used and occupied Parcel B by placing vehicles, storage and shipping containers, refuse, debris and hazardous materials on Parcel B.
96. Apkin has never paid for the use and occupation of said Parcel B.
97. Apkin received the substantial benefit of the use of Parcel B, the value of which Apkin was aware of based upon the terms of the Lease applicable to Parcel A.
98. Apkin understood it was receiving a substantial benefit without paying therefor based upon the terms of, and its past payments under, the Lease applicable to Parcel A.

99. Apkin's continued use and occupation of Parcel B without payment therefor has unjustly enriched Apkin, and caused damages, in the amount of the fair market rental value of Parcel B, plus interest and reasonable rent increases based upon the rate of inflation.

COUNT VI - NUISANCE (PARCEL A & B)

100. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 99 as if fully set forth herein.

101. Apkin has caused or allowed an accumulation of hazardous materials, vehicles, shipping and storage containers, refuse or debris to accumulate on Parcels A and B of the Authority Property.

102. Apkin has caused or allowed hazardous materials and contaminated products to come into contact with the Authority Property and created an unlawful retention pond on the Authority Property.

103. Apkin has stored and maintained hazardous materials in a manner that risks combustion and endangers public health and safety, and has in fact caused a large vehicle fire to erupt.

104. Upon information and belief, Apkin's placement and storage of hazardous materials and waste, and creation of an unlawful retention pond, has resulted in a release of hazardous materials on the Authority Property which requires remediation under the laws of the Commonwealth of Massachusetts and the United States Environmental Protection Agency.

105. Apkin has created, permitted, or maintained a condition or activity on the Authority Property that has caused a substantial and unreasonable interference with the Authority's use and enjoyment of thereof.

106. The conditions on the Authority and Apkin Properties, as documented through Fire Department's Incident Report No. 21-421-IN, present a nuisance and threat to public health and safety.
107. The nuisance conditions at the Authority and Apkin Properties endanger the health and safety of all persons that come into contact with said properties, including, without limitation, the owners and operators of the Apkin Property, public safety personnel, and the general public such that no further delay in remediation of said nuisance can be permitted.

COUNT VII – NEGLIGENCE

108. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 107 as if fully set forth herein.
109. Apkin has a duty to maintain the Apkin Property and scrapyard business in a safe and responsible manner such that its operations do not endanger surrounding properties and property owners, public safety personnel, or the environment.
110. Apkin breached its duty to maintain its property and scrapyard business in a safe and responsible manner when it stored, moved, and crushed vehicles containing gasoline and other hazardous chemicals.
111. Upon information and belief, Apkin's placement and storage of hazardous materials and waste, and creation of an unlawful retention pond, has resulted in a release of hazardous materials on the Authority Property which requires remediation under the laws of the Commonwealth of Massachusetts and the United States Environmental Protection Agency.
112. Apkin's failure to store, move, and crush vehicles in a safe and responsible manner resulted in a large fire containing hazardous materials at the Apkin Property on May 25, 2021 that

threatened the health and safety of first responders, the occupants of the Authority and Apkin Properties, and the general public and caused the City to incur significant costs in suppressing said fire.

113. The City provided firefighting services and incurred costs as a direct result of Apkin's negligent maintenance of the Apkin Property and use of the Authority Property.

114. The costs incurred by the City were the foreseeable result of Apkin's failure to properly handle hazardous materials and negligent maintenance of the Apkin Property and use of the Authority Property.

115. Pursuant to G.L. c. 266, §8, the City may recover against any person the expense of extinguishing a fire created upon, or that causes damage to, the property of another.

116. The City invoiced Apkin for costs incurred in relation to the May 25, 2021 fire at the Apkin and Authority Properties, totaling \$83,791.76, and Apkin has failed or refused to pay such invoice.

117. Accordingly, the City is entitled to judgment ordering Apkin to pay the City \$83,791.76 for damages incurred as a result of Apkin's negligence.

PRAYERS FOR RELIEF

A. Issue a Short Order of Notice for a hearing on the Plaintiffs's Motion for Preliminary Injunction.

B. Issue an order placing an attachment on the right, title and interest on all real property owned by the Defendants in Berkshire County to the amount of two hundred eighteen thousand seven hundred seventy one dollars (\$218,771).

C. After a hearing, enter a Preliminary Injunction: (1) enjoining the Defendants from their unlawful use and occupancy of the Authority Property; (2) requiring the Defendants to

immediately remove all vehicles, waste, scrap materials, junk, and debris from the Authority Property, and all tools, equipment, vehicles and other implements of the Defendants' business; (3) requiring the Defendants to immediately engage the services of a Licensed Site Professional or other qualified service to perform a comprehensive environmental site assessment on the Authority Property; (4) requiring the Defendants to remediate any environmental contamination found on the Authority Property and to return the Authority Property to its original condition; and (5) requiring the Defendants to immediately take all actions necessary to remove the unlawful retention pond installed on the Authority Property, including obtaining all required permits and approvals for such work.

D. After adjudication on the merits, issue a permanent injunction (1) enjoining the Defendants from their unlawful use and occupancy of the Authority Property; (2) requiring the Defendants to immediately remove all vehicles, waste, scrap materials, junk, and debris from the Authority Property, and all tools, equipment, vehicles and other implements of the Defendants' business; (3) requiring the Defendants to immediately engage the services of a Licensed Site Professional or other qualified service to perform a comprehensive environmental site assessment on the Authority Property; (4) requiring the Defendants to remediate any environmental contamination found on the Authority Property and to return the Authority Property to its original condition; and (5) requiring the Defendants to immediately take all actions necessary to remove the unlawful retention pond installed on the Authority Property, including obtaining all required permits and approvals for such work.

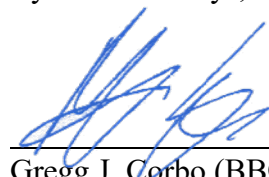
E. After an adjudication on the merits, order the Defendants to pay a sum of money to the City for the fair market rental value of the Defendants' use and occupancy of the Authority Property

for the period of January 1, 2011 to the present, in an amount equal to the fair market rental value of the portion or portions of the Authority Property occupied by the Defendants.

- F. Award the City the sum of \$83,791.76 as damages as a result of the Defendants' negligence in causing the fire on the Authority and Apkin Properties.
- G. After adjudication on the merits, award the Plaintiffs all of its costs and reasonable attorneys' fees incurred in the prosecution of this action.
- H. Award the Plaintiffs such other relief as the Court deems just and equitable.

CITY OF NORTH ADAMS and the CITY
OF NORTH ADAMS REDEVELOPMENT
AUTHORITY,

By their attorneys,



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DATED: February 8, 2023

844496v3/20900/0024

VERIFICATION

I, Mary Katherine Eade, Interim Administrative Officer for the City of North Adams, hereby state that I have read the foregoing Verified Complaint and that the facts set forth therein are true and accurate, based upon my personal knowledge and/or my review of the records of the City of North Adams and the information available to me.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 7th DAY OF FEBRUARY, 2023.



Mary Katherine Eade

Interim Administrative Officer, North Adams